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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kini M. Seawright,

Plaintiff,

vs.

State of Arizona, et al.,

Defendants.

No. CV 11-1304-PHX-JAT

ORDER

Pending before the Court is Plaintiff's Motion for Leave to File a Second Amended Complaint. (Doc. 35). Defendants filed a Response to Plaintiff's Motion for Leave to File a Second Amended Complaint. (Doc. 43). There is no Reply. The Court now rules on the motion.

I. BACKGROUND

On July 2, 2010, Dana Seawright ("Dana"), an inmate at the Arizona State Prison Complex-Lewis ("ASPC-Lewis"), was moved from Housing Unit 2-F Run to Housing Unit 2-D Run. Plaintiff alleges that on the morning of July 3, 2010, Dana was "savagely beaten and left for dead" by fellow inmates less than 24 hours after arriving in Housing Unit 2-D. (Doc. 19 at 4). Plaintiff Kini M. Seawright ("Kini"), Dana's mother, alleges that Arizona Department of Corrections Officers ("COs") in the Stiner Unit of ASPC-Lewis had "clear, advanced warning" that Dana would receive a "beat down" on July 3, 2010 and purposely

1 left inmates “unchecked and unsupervised for at least thirty-four (34) minutes or more” on
2 the morning of Dana’s attack. *Id.* at 4.

3 Plaintiff also alleges that ADC CO II Edna Jackson-Bay (“Jackson-Bay”) was
4 informed by two inmates that “Dana was not asleep, that he tried to wake Dana up but Dana
5 was not talking or moving.” *Id.* at 6. At 7:28 A.M., Jackson-Bay “went to Dana’s bed and
6 found him lying face down” with “blood coming from all sides of Dana’s body.” *Id.* Other
7 ASPC-Lewis staff responders similarly found Dana in a pool of blood with multiple stab
8 wounds.

9 Plaintiff alleges that ASPC-Lewis personnel failed to request or administer any kind
10 of emergency medical assistance for more than 10 minutes after discovering Dana as non-
11 responsive in his cell. Dana was ultimately placed on a gurney for transport to complex
12 medical and St. Joseph’s Hospital in Phoenix via helicopter. Dana died on July 7, 2010 after
13 being taken off of life support.

14 In response to Dana’s death, Plaintiff filed an original Complaint on June 30, 2011.
15 On September 1, 2011, Defendants filed a Motion to Dismiss, after which Plaintiff
16 voluntarily amended and filed the First Amended Complaint on October 12, 2011. (Doc. 19).
17 Subsequently, Plaintiff filed this Motion for Leave to File a Second Amended Complaint on
18 March 16, 2012. (Doc. 35-1).

19 **II. LEGAL STANDARD**

20 Motions to amend pleadings to add claims or parties are governed by Federal Rule of
21 Civil Procedure 15(a), which provides in pertinent part:

22 A party may amend its pleading once as a matter of course
23 within 21 days after serving it, or if the pleading is one to which
24 a responsive pleading is required, 21 days after service of a
25 responsive pleading or 21 days after service of a motion under
26 Rule 12(b), (e), or (f), whichever is earlier. In all other cases, a
party may amend its pleading only with the opposing party's
written consent or the court's leave. The court should freely give
leave when justice so requires.

27 Fed. R. Civ. P. 15(a). Although the decision on whether to grant or deny a motion to amend
28 is within the discretion of the district court, “Rule 15(a) declares that leave to amend ‘shall

1 be freely given when justice so requires'; this mandate is to be heeded." *Foman v. Davis*, 371
2 U.S. 178, 182 (1962). "In exercising its discretion[,] . . . 'a court must be guided by the
3 underlying purpose of Rule 15—to facilitate decision on the merits rather than on the
4 pleadings or technicalities. . . . Thus, 'Rule 15's policy of favoring amendments to pleadings
5 should be applied with extreme liberality.'" *Eldridge v. Block*, 832 F.2d 1132, 1135 (9th Cir.
6 1987) (citations omitted). "Generally, this determination should be performed with all
7 inferences in favor of granting the motion." *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877,
8 880 (9th Cir. 1999) (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.
9 1987)).

10 The liberal policy in favor of amendments, however, is subject to limitations. After
11 the defendant files a responsive pleading, leave to amend is not appropriate if the
12 "amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or
13 creates undue delay." *Madeja v. Olympic Packers*, 310 F.3d 628 (9th Cir. 2002), quoting
14 *Yakima Indian Nation v. Wash. Dep't of Revenue*, 176 F.3d 1241, 1246 (9th Cir. 1999)
15 (citation and internal quotation marks omitted); *see also Foman*, 371 U.S. at 182 (holding
16 that motions to amend should be granted unless the district court determines that there has
17 been a showing of: (1) undue delay; (2) bad faith or dilatory motives on the part of the
18 movant; (3) repeated failure to cure deficiencies by previous amendments; (4) undue
19 prejudice to the opposing party; or (5) futility of the proposed amendment). "The party
20 opposing amendment bears the burden of showing prejudice," futility, or one of the other
21 permissible reasons for denying a motion to amend. *DCD Programs*, 833 F.2d at 187; *see*
22 *also Richardson v. United States*, 841 F.2d 993, 999 (9th Cir. 1988) (stating that leave to
23 amend should be freely given unless opposing party makes "an affirmative showing of either
24 prejudice or bad faith").

25 Regarding futility, "[a] district court does not err in denying leave to amend where the
26 amendment would be futile . . . or would be subject to dismissal." *Saul v. United States*, 928
27 F.2d 829, 843 (9th Cir. 1991) (citations omitted); *see also Miller v. Rykoff-Sexton, Inc.*, 845
28 F.2d 209, 214 (9th Cir. 1988) ("A motion for leave to amend may be denied if it appears to

1 be futile or legally insufficient.”) (citation omitted). Similarly, a motion for leave to amend
 2 is futile if it can be defeated on a motion for summary judgment. *Gabrielson v. Montgomery*
 3 *Ward & Co.*, 785 F.2d 762, 766 (9th Cir. 1986). “However, a proposed amendment is futile
 4 only if no set of facts can be proved under the amendment to the pleadings that would
 5 constitute a valid and sufficient claim or defense.” *Miller*, 845 F.2d at 214.

6 **III. ANALYSIS**

7 Here, Plaintiff’s Motion for Leave to File a Second Amended Complaint was filed
 8 before the April 23, 2012 deadline set by this Court’s Rule 16 Scheduling Order (Doc. 30).
 9 Plaintiff claims that the “purpose of filing the Second Amended Complaint is to supplement
 10 and flesh out the existing allegations of deliberate indifference regarding the supervisory
 11 responsibilities of Arizona Department of Corrections (“ADC”) Charles Ryan” and that
 12 “none of the factors which would justify a denial of leave to amend under Rule 15(a) are
 13 present (undue delay, bad faith, dilatory motive or undue prejudice).” (Doc. 35 at 3).
 14 Defendants oppose the motion only on the grounds that the addition of six new defendants
 15 (ADC, William R. White, Vincent Hartley, Laura Chavez, and Nurse Scott) would be futile
 16 because each is subject to dismissal. Defendants do not object to amendments “adding or
 17 deleting allegations against current defendants.” (Doc. 43 at 10).

18 While this Court has considerable discretion in deciding motions to amend, the Court
 19 will not allow Plaintiff to add ADC as a defendant because it would be futile. Rule 17(b) of
 20 the Federal Rules of Civil Procedure dictates that a non-corporate entity’s ability to sue or
 21 be sued is determined “by the law of the state where the court is located.” Fed.R.Civ.P. 17(b).
 22 Under Arizona law, Plaintiff cannot sue a non-jural entity. *See, e.g., Kimball v. Shoftsall*, 494
 23 P.2d 1357, 1359 (1972). This Court has further held that “[a] plaintiff may not bring a claim
 24 against a governmental agency or department unless it enjoys a separate and distinct legal
 25 existence.” *Applegate v. Arizona*, CV-10-00047-PHX-JAT, 2010 WL 4574460 (D. Ariz.
 26 Nov. 5, 2010) (citing *Darby v. Pasadena Police Dep’t*, 939 F.2d 311, 313-14 (5th Cir.1991)).
 27 No Arizona state legislation provides the ADC with authority to sue or be sued. Since the
 28 ADC is a non-jural entity that is not authorized under Arizona law to sue or be sued, it is not

1 a proper party and is subject to dismissal. *See generally* AZ ST T. 41, Ch. 11, Art. 1, *et seq.*
 2 The Court will therefore deny the motion to amend to add ADC as a defendant.

3 Additionally, the Court finds that William R. White (“White”), warden of the ASOC-
 4 Lewis, cannot be sued under § 1983 in his personal or official capacity. In his official
 5 capacity as a state official and warden for the ASPC-Lewis, White does not constitute a
 6 person within the meaning of § 1983. *Doe v. Lawrence Livermore Nat. Lab.*, 131 F.3d 836,
 7 839 (9th Cir. 1997) (“Claims under § 1983 are limited by the scope of the Eleventh
 8 Amendment.”); *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989) (“Suit against
 9 a state official in his or her official capacity is not a suit against the official but rather is a suit
 10 against the official's office.”); *see also Cortez v. County of Los Angeles*, 294 F.3d 1186 (9th
 11 Cir. 2002). Moreover, White does not qualify for the “narrow, but well-established,
 12 exception to Eleventh Amendment immunity.” *Doe v. Lawrence Livermore Nat. Lab.*, 131
 13 F.3d 836, 839 (9th Cir. 1997). Under the *Ex parte Young* doctrine, a state official acting
 14 within his official capacity can qualify as a “person” under § 1983 if sued only for
 15 prospective injunctive relief. *Ex parte Young*, 209 U.S. 123, 155 (1908). Since Plaintiff’s
 16 Second Amended Complaint seeks to add White as a defendant as a state official while
 17 seeking damages only, the *Ex parte Young* exception does not apply and White cannot be
 18 added as a defendant in his official capacity.

19 The proposed Second Amended Complaint also fails to state a claim against White
 20 in his personal capacity. Rule 8(a)(2) requires a “short and plain statement of the claim
 21 showing that the pleader is entitled to relief,” so that the defendant has “fair notice of what
 22 the . . . claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550
 23 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Although a
 24 complaint attacked for failure to state a claim does not need detailed factual allegations, the
 25 pleader’s obligation to provide the grounds for relief requires “more than labels and
 26 conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.*
 27 at 555 (internal citations omitted). The factual allegations of the complaint must be sufficient
 28 to raise a right to relief above a speculative level. *Id.* Furthermore, Rule 8(a)(2) “requires a

1 ‘showing,’ rather than a blanket assertion, of entitlement to relief. Rule 8’s pleading standard
 2 demands more than “an unadorned, the defendant-unlawfully-harmed-me accusation.”
 3 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). A complaint
 4 that offers nothing more than naked assertions will not suffice. While courts must construe
 5 the facts alleged in the complaint in the light most favorable to the drafter of the complaint
 6 and the court must accept all well-pleaded factual allegations as true, courts do not have to
 7 accept as true a legal conclusion couched as a factual allegation. See *Shwarz v. United States*,
 8 234 F.3d 428, 435 (9th Cir. 2000); *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

9 For a claim against White in his personal capacity to be successful under § 1983,
 10 Plaintiff must allege an “affirmative link” between White’s misconduct or the “adoption of
 11 any plan or policy . . . otherwise showing [his] authorization or approval of such misconduct”
 12 and Dana’s injury. *Rizzo v. Goode*, 423 U.S. 362, 371 (1976). Broad generalizations or
 13 conclusions are inadequate to establish an inference of knowledge based on past conduct.
 14 *Starr v. Baca*, 652 F.3d 1202, 1221 (9th Cir. 2011). Plaintiff’s proposed amendment fails to
 15 state, with adequate specificity, an affirmative link between Dana’s injury and White’s
 16 alleged conduct or approval of a particular plan or policy of misconduct. Plaintiff alleges that
 17 White “had in place, and had ratified, official policies, procedures, and longstanding customs
 18 and practices which permitted and encouraged their custodial COs . . . to unjustifiably,
 19 unreasonably and in violation of the Fourth and Eighth Amendments to permit the physical
 20 abuse and torture” of inmates in their custody. (Doc. 35-1 at 13). Because Plaintiff’s
 21 proposed amendment does not contain any specific, factual allegations that White, through
 22 his personal actions, violated the Fourth and Eighth Amendments or had knowledge of and
 23 approved subordinate misconduct, the proposed amendment fails to state a claim and is
 24 subject to dismissal. The Court therefore will not allow Plaintiff to name White as a
 25 defendant in his personal capacity either.

26 The Court further finds that Plaintiff’s proposed amendment lacks sufficient
 27 allegations to state § 1983 claims against ADC CO II Vincent Hartley (“Hartley”), ADC CO
 28 II Brady Harvey (“Harvey”), ADC CO II Laura Chavez (“Chavez”), and chief ASPC-Lewis

1 medical personnel on staff, Nurse Scott (“Scott”). Under the Supreme Court’s two-part test
2 for deliberate indifference to safety, “a constitutional violation occurs only where the
3 deprivation alleged is, objectively, sufficiently serious, and the official has acted with
4 deliberate indifference to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 825-26
5 (1994) (internal citations and quotations omitted). For a prison official to fulfill the
6 deliberately indifferent requirement, a “sufficiently culpable state of mind” must be present.
7 *Id.* at 834. “Deliberate indifference describes a state of mind more blameworthy than
8 negligence.” *Id.* at 835, *see also Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990)
9 (“While poor medical treatment will at a certain point rise to the level of constitutional
10 violation, mere malpractice, or even gross negligence, does not suffice.”).

11 Here, Plaintiff fails to plead in the proposed Second Amended Complaint that Hartley,
12 Harvey, Chavez, and Scott possessed “a state of mind more blameworthy than negligence.”
13 *Farmer*, 511 U.S. at 835. Without the requisite mental culpability, those proposed defendants
14 cannot be added to Plaintiff’s § 1983 claim of deliberate indifference to safety. Plaintiff also
15 alleges that the proposed defendants engaged in deliberate indifference to Dana’s health,
16 safety and medical needs by: “[f]ailing to have any COs perform regular security checks in
17 Housing Unit 2 on the morning of July 3, 2010; ADC medical staff failing to adequately
18 assess the severity of Dana’s injuries upon arriving at the scene; ADC medical staff failing
19 to adequately assess that Dana had to be immediately transported to a Level 1 Trauma Center
20 for treatment of a head trauma.” (Doc. 35-1 at 13). The Court finds that these statements
21 insufficiently allege that the proposed defendants acted with the mental culpability required
22 to bring a § 1983 claim for deliberate indifference to safety. Taking the proposed alleged
23 facts to be true and construing them in a light most favorable to Plaintiff, it is not enough that
24 proposed defendants acted with negligence or even gross negligence. Because the proposed
25 amendments do not plead a plausible § 1983 claim against Hartley, Harvey, Chavez, and
26 Scott, they cannot be added as defendants.

27 Finally, while Plaintiff seeks to add the ADC, Ryan, and White as defendants to Count
28 Three for negligence, “any and all causes of action which may arise out of tort caused by the

1 director, prison officers or employees of the department, within the scope of their legal duty,
2 shall run only against the state.” A.R.S. § 31-201.01(F); *Howland v. State*, 169 Ariz. 293,
3 297, 818 P.2d 1169, 1173 (Ct. App. 1991). The proposed defendants therefore are improper
4 parties under Plaintiff’s state-law negligence claim and cannot be added to Count Three in
5 the Second Amended Complaint.

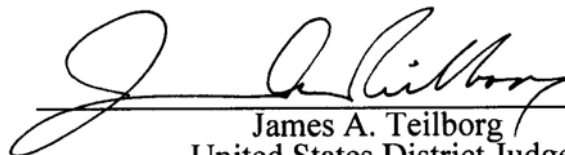
6 In sum, the Court finds that the Plaintiff’s motion to amend to add the additional
7 proposed defendants is futile. Therefore, Plaintiff’s motion to amend to add the ADC, White,
8 Hartley, Chavez, and Scott as defendants is denied. The Court will allow all other proposed
9 amendments to Plaintiff’s Second Amended Complaint, to the extent that they add or delete
10 allegations against current defendants.

11 **IV. CONCLUSION**

12 Accordingly,

13 **IT IS ORDERED** that Plaintiff’s Motion for Leave to File a Second Amended
14 Complaint (Doc. 35) is **GRANTED** in part and **DENIED** in part. The motion is granted to
15 the limited extent outlined above and denied in all other respects. Plaintiff shall file the
16 Second Amended Complaint within five days of the date of this Order.

17 DATED this 13th day of June, 2012.

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21 James A. Teilborg
22 United States District Judge
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